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IN THE

Supreme Court of the United States

October Term 1973

NO. 73-379

DAN SULLIVAN, BY NEXT FRIEND,
DANIEL H. SULLIVAN, ET AL.,
and
PAUL KITCHEN, BY NEXT FRIEND,
ANTHONY KITCHEN, *Petitioners*
v.
HOUSTON INDEPENDENT SCHOOL DISTRICT,
ET AL., *Respondents*

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

BRIEF OF RESPONDENT IN OPPOSITION

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September 26, 1973

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BRIEF OF RESPONDENT IN OPPOSITION

Opinions Below

The opinions of the Courts below are accurately and adequately stated in Petitioners' Brief.

Jurisdiction

The jurisdiction is adequatey stated in Petitioners' Brief.

Questions Presented

1. Whether the Court was correct in approving the regulation that material be submitted to the principal prior to distribution on school grounds.

2. Whether the Court properly balanced the First Amendment rights of Paul Kitchen with the responsibility of school authorities to maintain the educational environment.

Statement Of The Case

This action began in 1969 with the filing of a complaint pursuant to 42 U.S.C. § 1983, by two minor Plaintiffs, Dan Sullivan and Michael Fisher, seeking reinstatement to Sharpstown Senior High School and injunctive and declaratory relief for themselves and others similarily situated from certain regulations of the Houston Independent School District (District). The District Court issued a memorandum opinion on November 17, 1969, 307 F.Supp. 1328 (S.D. Tex.) followed by a Permanent Injunction Decree and Declaratory Judgment on December 30, 1969. The District appealed from the order; however, it was dismissed on the District's motion on May 21, 1970.

Rather than prosecute on appeal, The Board of Education (Board) created the Student Relations Committee (Committee) to formulate rules for student conduct which would be reasonable, in conformity with the decree of the District Court, and in harmony with constitutional principles. The Committee was comprised of two members of the Board (one man, one woman), the general superintendent, two assistant superintendents, two students (one black girl, one white boy), three attorneys,

the President of the Parents League of Houston, the Executive Director of the Houston Metropolitan Ministries, a representative of the Harris County Drug Abuse Program and the President of the City Council Parent-Teacher Association (R. 983-88).

The Committee conducted three extensive public hearings in which a substantial number of people of all ethnic, economic, and political backgrounds, students, teachers, principals, administrators, parents, interested citizens and attorneys testified (R. 986-89).

The public hearings and the deliberations of the Committee resulted in a draft of regulations which was presented to the Board. After careful deliberation and further discussion at a public meeting in late February or early March, 1970, the Board adopted in toto the recommendations of the Committee as the Supplemental Policies Concerning Student Conduct of the District (Appendix A), and they were distributed throughout the District and posted in each school building.

On October 20, 1970, Paul Kitchen, a junior student at Waltrip Senior High School, was standing near an entrance to Waltrip Senior High School selling the subterranian publication, *Space City!* to the students as they entered the school grounds. Paul's location was such that after a student passed Paul he had to enter the school grounds because the street on which he was standing dead ends into the school parking lot (R. 473). The sales of *Space City!* by Paul Kitchen, even though off campus, were calculated to and did result in the papers being brought into the school. Paul recognized that the newspapers probably would cause disruptions on campus and warned the purchasers to be careful how they handled the papers at school (R. 918-23). Paul instructed the

students that they were taking the papers into the school at their own risk (R. 921-23).

Gordon Cotton, principal at Waltrip, went to the place where Paul was selling *Space City!* purchased a copy and read several pages. Mr. Cotton told Paul that he was selling the papers without first complying with the published Board policies concerning distribution on campus. Paul had not complied with the Supplemental Policies Concerning Student Conduct which requires that such material be submitted to the principal twenty-four (24) hours prior to the planned distribution (R. 501, 917; Appendix A). Mr. Cotton reminded Paul that he was selling the papers in violation of Board policy and asked him to stop, but that he could sell the papers after school at the entrances if he so desired (R. 175-76). Paul defied the principal and continued selling the papers.

Paul was temporarily suspended from school because of his failure to submit the paper prior to distribution and because of his continued violation of school policy (R. 501-06).

As Paul left Mr. Cotton's office on October 20, 1970, after being informed that he was temporarily suspended for violating Board policy, he slammed the door to Mr. Cotton's office and shouted "I don't want to go to this goddamn school anyway!" (R. 507-1079). These events took place within the hearing of Mr. Cotton's secretary and clerk, both of whom were women.

Paul persisted in coming back on the school grounds during the period of his agreed suspension between October 20, 1970, and October 26, 1970. On separate occasions, Paul was told by Mr. William O. Weygandt, the assistant principal, and Mr. Nelson Millender, the driver education teacher, to leave the school and not to return

until the conference with Mr. Cotton on October 26, 1970 (R. 1079-80, 1105-07). Mr. Weygandt told Paul it was against Board policy for a student to return to school grounds during the period of suspension and that if he were caught on the grounds again he would have to call the police and have him picked up (R. 1080).

On the morning of October 26, 1970, the day on which Mr. Cotton and Mr. Kitchen had agreed to have a conference regarding Paul's situation, Paul was again selling *Space City!* near the place where he had been selling the newspapers on October 20, 1970 (R. 571). Paul tried to run away when he saw Mr. Cotton coming with Mr. James H. Vann, a math teacher; however, Mr. Cotton finally was able to confront Paul and show him a copy of the Board policies on the distribution of literature on campus (R. 436, 1099), which were posted on the bulletin board in each classroom at Waltrip Senior High School. After handing Paul a copy of the Supplemental Policies Concerning Student Conduct, Mr. Cotton told Paul he would be picked up by the police if he did not stop selling the papers in violation of the published Board policy. With numerous students within hearing, Paul responded by yelling "communism! communism! . . . fuck you! (Mr. Cotton) and fuck the pigs! (the police)" (R. 436, 1099-1100).

Subsequently Paul was taken to the police station and released, following which Mr. Kitchen obtained legal counsel and refused to appear for the conference on October 26, 1970, as previously agreed.

A hearing was held in Mr. Cotton's office on October 29, 1970, at which Paul was represented by his legal counsel, Mr. Eric Nelson. Following the hearing, Paul was suspended for the remainder of the semester on the

grounds that: (1) he had violated published Board policy pertaining to publications, and (2) he used profane and obscene language ("goddamn" and "fuck") toward his Principal, Mr. Cotton, on the two occasions (R. 524-25).

The decision of the Principal was appealed to the Assistant Superintendent, and a de novo hearing was held on November 9, 1970. The decision to suspend Paul for the remainder of the semester was affirmed by the Assistant Superintendent. The transcript of that hearing was reviewed by the Deputy Superintendent for Secondary Schools and the Superintendent for Instruction and Administration, who affirmed the decisions of the Principal and Assistant Superintendent (R. 526-527).

On November 23, 1970, Paul and his father filed this suit as a contempt action under the Permanent Injunction and Declaratory Judgment of December 30, 1969. On the following day, the District Court entered a temporary restraining order without notice or hearing directing that Paul be permitted to attend classes and exercise all the usual rights and privileges of students at Waltrip Senior High School. This temporary restraining order entered on November 24, 1970, was extended by the Court, without agreement of the parties, for subsequent ten (10) day periods extending through February 13, 1971, a total of fifty-nine (59) days.

At a conference in chambers on December 3, 1970, District Judge Woodrow Seals directed the parties to hold a hearing before the Board of Education of the District. A hearing was held before the Board on December 16, 1970, at which Paul and his father appeared with their attorneys. They presented witnesses and evidence, made arguments and cross-examined witnesses. A court reporter was present at the hearing, which lasted for four hours.

Based on the evidence presented at the hearing, the Board held that Mr. Cotton acted in good faith and in accordance with the published Board policy, and that Paul violated the published Board policy and by his actions was guilty of insubordination. The decision of the Board of Education was that Paul be suspended for two (2) weeks beginning January 4, 1971, and that he be placed on probation for the remainder of the 1970-71 school year (R. 528-29, 542-43).

The hearing before the District Court began on February 8, 1971, and was concluded on February 18, 1971. On June 23, 1971, the District Court entered its Memorandum Opinion and Order in which it chastised Paul for not challenging the legally enacted rules through lawful means, found Paul Kitchen had been improperly suspended, and ordered that he be allowed credit for school work missed during the time of suspension. The Court found that Gordon Cotton and the School Board had acted in good faith, thereby refusing to hold them in contempt of the Permanent Injunction and Declaratory Judgment of December 30, 1969. This Opinion was followed on July 6, 1971, by an Injunction Decree Granting Supplementary Injunctive Relief in Aid of the Permanent Injunction Decree which incorporated as findings of fact and conclusions of law the June 23, 1971, Memorandum Opinion and Order. On October 7, 1971, the District Court entered a further Memorandum Opinion and Supplementary Permanent Injunction Decree proscribing the enforcement of certain provisions of the Supplemental Policies Concerning Student Conduct.

Both the District and Paul Kitchen appealed to the Court of Appeals for the Fifth Circuit. The Fifth Circuit left the Permanent Injunction and Declaratory Judgment

of December 30, 1969 in force but vacated the Supplemental Injunction Decrees of July 6 and October 7, 1971. The Fifth Circuit specifically upheld the constitutionality of the requirement that students submit written material to school authorities prior to distribution pursuant to *Shanley v. Northeast Independent School District*, 462 F.2d 960 (5th Cir. 1972). The Court further determined that "Paul's flagrant disregard of school regulations, his open and repeated defiance of the principal's request, and his resort to profane epithet" were sufficient reasons for the school authorities to discipline him.

Argument

I.

The Decision Below Is Correct And There Is No Conflict Among The Circuits

The Court of Appeals for the Fifth Circuit correctly held constitutionally acceptable the requirement that students submit material to the principal prior to distribution on the school grounds. The constitutionality of this procedure was approved by this Court in a non-public school environment. *Freedman v. Maryland*, 380 U.S. 51, 85 S. Ct. 734 (1965).

In approving the Districts' prior submission requirement, the Fifth Circuit referred to procedural safeguards outlined in *Freedman v. Maryland, supra*, and recently enunciated by the Court in *Shanley v. Northeast Independent School District, supra*, by the Second Circuit in *Eisner v. Stamford Board of Education*, 440 F.2d 803 (2nd Cir. 1971), and the Fourth Circuit in *Quarterman v. Byrd*, 453 F.2d 54 (4th Cir. 1971).

While the First and Seventh Circuit Courts of Appeals in *Riseman v. School Committee*, 439 F.2d 148 (1st Cir.

1971) and *Fujishima v. Board of Education*, 460 F.2d 1355 (7th Cir. 1972) seemingly reach a contrary result, both *Riseman* and *Fujishima* involved "prior approval" regulations rather than "prior submission" regulations as in the case *sub judice*.

In *Riseman v. School Committee, supra*, the regulation prohibited the use of pupils, staff members or facilities of the school in any manner for advertising or promoting "any community or non-school agency or organization *without the approval of the School Committee.*" 439 F.2d 148 (Emphasis added). Similarly, in *Fujishima v. Board of Education, supra*, the questioned regulation provided that no person could distribute books, tracts or other publications on school premises *"unless the same shall have been approved by the General Superintendent of Schools."* 460 F.2d 1355, 1356 (Emphasis added). The *Fujishima* Court did not consider this Court's ruling in *Freedman v. Maryland* that prior submission, even in the non-school environment was acceptable with proper procedural safeguards, and the *Riseman* Court simply noted that the regulation it considered did not reflect any effort to minimize the adverse affect of prior restraint as prescribed in *Freedman v. Maryland, supra.*

Unlike the "prior approval" regulations of *Riseman* and *Fujishima*, the regulation of the Houston District provides for "prior review." This review is not for approval but to determine whether the publication comports with the specific guidelines in the Supplemental Policies Concerning Student Conduct. Any publication can be distributed unless "the publication contains libelous or obscene language or advocates illegal action or disobedience to published school rules on student conduct adopted by the Board of Trustees." The District regulations specify that "distribution shall not be prohibited because the publication con-

tains the expression of any idea, popular or unpopular." (Appendix A). The principal has up to one working day to determine if the publication is of the type prohibited under the rules. Distribution may take place the next day unless the principal notifies the sponsors of the publication that he and the school attorneys have determined that the publication is subject to prohibition by the regulations.

The facts of the case *sub judice*, the regulations in question, and the application or non-application of the principles of *Freedman v. Maryland, supra,* differ significantly from those of *Riseman v. School Committee, supra,* and *Fujishima v. Board of Education, supra.*

Each case, therefore, must be evaluated separately. The decision of the Court below is correct and there is no conflict among the Circuit Courts of Appeals.

II.

Independent, Non-Constitutional Grounds Support The Suspension Of Paul Kitchen; Therefore, This Court Need Not Reach Any Constitutional Questions

After being notified that he was being sent home until a conference could be held with his parents, Paul shouted "I don't want to go to this goddamn school anyway" as he left the principal's office on the morning of October 20, 1970. 475 F.2d 1071, 1074. This was said within the hearing of the principal's two female assistants.

On the morning of October 26, 1970, Paul was again selling papers at the school gate to students as they came onto the school grounds. Mr. Cotton, the principal, gave Paul a copy of the Supplemental Policies Concerning Student Conduct and asked him to comply. Paul responded in a loud voice, within the hearing of a number of his

fellow students, "fuck" with direct reference "you" (Gordon Cotton) and to the "pigs" (the police). Such action by a student constitutes "gross disrespect" for the student's principal and as such, is not an activity entitled to constitutional protection. A suspension may be based on such action by a student. *Jones v. State Board of Education for Tennessee,* 279 F.Supp. 190 (M.D. Tenn.) 407 F.2d 834 (6th Cir. 1969) cert. dism'd 397 U.S. 31, 90 S.Ct. 779 (1970); *Norton v. Discipline Committee of East Tennessee State University,* 419 F.2d 195 (6th Cir. 1969) cert. denied 399 U.S. 906, 90 S.Ct. 2191 (1970). Also see *Esteban v. Central Missouri State College,* 415 F.2d 1077 (8th Cir. 169) cert. denied, 398 U.S. 965, 90 S.Ct. 2169 (1970) and *Schwartz v. Schuker,* 298 F.Supp. 238 (E.D. N.Y. 1969).

Paul's references to the school, the principal and to the police in the context in which they were used and in the circumstances in which they were made are not protected speech, *Cantwell v. Connecticut,* 310 U.S. 296, 60 S.Ct. 900 (1940). They are sufficient reasons in and of themselves to justify Paul's suspension under the Texas Education Code, §21.301. *Pervis v. LaMarque Independent School District,* 328 F.Supp. 638 (S.D. Tex. 1971) rev'd on other grounds 466 F.2d 1054 (5th Cir. 1972) and *Southern v. Dallas,* 318 F.Supp. 355 (N.D. Tex. 1970).

The Fifth Circuit specifically found that Paul's suspension was supported by substantial evidence. The Court also held that Paul's conduct in defying the principal, his persistence in returning to the school grounds during his agreed suspension, and his twice shouting profanity at Mr. Cotton within the hearing of students and others were sufficient grounds for the imposition of discipline. 475 F.2d 1071, 1076.

The District Court admonished Paul for his conduct: "Students should not be permitted to ignore, as movant did, legally enacted regulations of the school district. Even if such regulations impinge in the most flagrant manner upon the constitutional rights of a student, his remedy is to challenge the rules through lawful means." 333 F.Supp. 1149, 1176. Accordingly, the District Court declined to hold the School District or the Principal in contempt. Paul Kitchen appealed and the "clean hands" language of the Fifth Circuit is directed to Paul's appeal of his suspension. The Petitioner has taken those words out of the context of the Fifth Circuit opinion as well as the context of the school environment in attempting to raise a constitutional issue. The Fifth Circuit's references to the "clean hands" doctrine related to Paul's acts which were independent grounds for the disciplinary action taken and not a consideration of the First Amendment rights of free speech in the abstract.

This Court has stated it will not "anticipate a question of constitutional law in advance of the necessity of deciding it." *Liverpool, N.Y. & Philadelphia Steamship Company v. Emigration Commissioners,* 113 U.S. 33, 39, 5 S.Ct. 352, 355 (1885). In *Burton v. United States,* 196 U.S. 283, 295, 25 S.Ct. 243, 245 (1905), this Court again stated the rule that, "it is not the habit of the Court to decide questions of a constitutional nature unless absolutely necessary to a decision of the case."

In the case of Paul Kitchen, it is not necessary to reach the alleged constitutional questions raised by the Petitioner. Paul's actions, independent of alleged First Amendment claims, were such that the school properly disciplined him. This Court should not pass upon the constitutional questions if there are other grounds on

which the case may be decided. *Light v. United States,* 220 U.S. 523, 31 S.Ct. 485 (1911) and *Siler v. Louisville & Nashville Ry. Co.,* 213 U.S. 175, 29 S.Ct. 451 (1909).

III.

There Are No Important Questions Of Constitutional Law As Applied In The Public School Environment

The First Amendment right of freedom of speech is one to which all citizens including school children are entitled. *Tinker v. Des Moines Independent Community School District,* 393 U.S. 503, 89 S.Ct. 733 (1969) and *Shelton v. Tucker,* 364 U.S. 479, 81 S.Ct. 247 (1960). However, it is also recognized that freedom of speech is not absolute, and it is within the power of the state (school district) to regulate its exercise in certain situations. The state may regulate the freedom of speech as to the time, place, manner and duration if such regulation is reasonable. *Cox v. Louisiana,* 379 U.S. 599, 85 S.Ct. 476 (1965) and *Adderley v. State of Florida,* 385 U.S. 39, 87 S.Ct. 242 (1966). The right of an educational institution to adopt and enforce reasonable nondiscriminatory regulations as to the time, place and manner of student expression has often been recognized by the courts. *Tinker v. Des Moines Independent Community School District, supra; Burnside v. Byars,* 363 F.2d 744 (5th Cir. 1966); *Blackwell v. Issaquena County Board of Education,* 363 F.2d 749 (5th Cir. 1966); *Sellers v. Regents of the University of California,* 432 F.2d 493 (9th Cir. 1970) cert. denied 401 U.S. 981, 91 S.Ct. 1194 (1971); *Guzick v. Drebus,* 431 F.2d 594 (6th Cir. 1970) cert. denied 401 U.S. 948, 91 S.Ct. 941

(1971) and, *Bayless v. Martine,* 430 F.2d 872 (5th Cir. 1969) cert. denied 406 U.S. 930, 92 S.Ct. 1775 (1972).

Some speech is not entitled to the protection of the First Amendment. *Chaplinsky v. State of New Hampshire,* 315 U.S. 568, 62 S.Ct. 766 (1942). This Court in *Chaplinsky,* said that allowing the broadest scope of language and purpose to the First and Fourteenth Amendments it was understood that the right of freedom of speech is not absolute at all times and under all circumstances:

> There are certain well-defined and narrowly limited cases of speech, the prevention and punishment of which has never been thought to raise any constitutional problems. *These include the lewd and obscene, the profane, the libelous, and the insulting or fighting words—those which by their very utterance inflict injury or tend to incite an immediate breach of the peace.* It has been well observed that such utterances are no essential part of any expression of ideas, and are of such slight social value as to step to truth that any benefit that might be derived from them is clearly outweighed by the social interest in order and morality. 315 U.S. 568, 571-72 (Emphasis added).

In *Chaplinsky,* this Court quoted *Cantwell v. Connecticut,* 310 U.S. 296, 60 S.Ct. 900 (1940) for the following:

> *Resort to epithet or personal abuse is not in any proper sense communication of information or opinion safe-guarded by the Constitution,* and its punishment as a criminal act would raise no questions under that instrument. 310 U.S. 296, 309-310 (Emphasis added).

In attempting to maintain a public school environment conducive to the pursuit of educational goals, the rights of individuals do not exist in a vacuum as Petitioner suggests. The unique environment of the public schools requires a balancing of the rights of each individual with the individual and collective rights of other students, faculty and staff. School officials have the responsibility to follow the constitutional and statutory requirements of the state to create and maintain an environment where education will occur. This is the precise balancing accomplished by the Student Relations Committee in developing the Supplemental Rules Concerning Student Conduct which the Petitioner asks this Court to invalidate.

There are important differences between the educational environment of a public high school and that of a college; and between the educational environment and society in general. *Grayned v. City of Rockford,* 404 U.S. 820, 92 S.Ct. 2294 (1972). A rule regulating student conduct may be unreasonable in a college or university environment yet reasonable in a high school environment. Weighed against absolute rights must be the right and obligation to maintain an atmosphere in the public schools conducive to learning.

This Court has long recognized that the scope of the States' authority over children's activities is broader than over that of adults. *Prince v. Commonwealth of Massachusetts,* 321 U.S. 158, 64 S.Ct. 438 (1944). In *Ginsberg v. State of New York,* 390 U.S. 629, 88 S.Ct. 1274 (1968), the Court cited *Prince v. Commonwealth, supra,* in upholding the constitutionality of a New York criminal obscenity statute which prohibited the sale of certain materials to minors. The distinction between children and adults applies with equal or greater force when considering the application of school rules. *Gere v. Stanley,*

320 F.Supp. 852 (M.D. Penn. 1970) and *Sims v. Board of Education,* 329 F.Supp. 678 (D.N.M. 1971).

This Court has been at the forefront in recognizing distinctions between the college and public school environments when applying constitutional principles. *Healy v. James,* 408 U.S. 169, 92 S.Ct. 2338, 2350 (1972) and *Tilton v. Richardson,* 403 U.S. 672, 686, 91 S.Ct. 2091, 2099 (1971). The Courts of Appeal and the District Courts also have considered specific differences in environment between the public schools and colleges.

A basic distinguishing factor is the relative immaturity of high school students as compared with that of their college counterparts. *Schwartz v. Schucker, supra,* and *Mailloux v. Kiley,* 436 F.2d 565 (1st Cir. 1971). The District Court in *Whitsell v. Pampa Independent School District,* 316 F.Supp. 852 aff'd 439 F.2d 1198 (5th Cir. 1971), felt it important that:

> It should be kept in mind that the rule is applicable to minor students of high school age which presents a different factual situation than would exist in a case of more mature college or university students. Conduct which would effect discipline in secondary schools might go unnoticed and be of little or no influence with older students. 316 F.Supp. 852, 854.

In addition to the factor of immaturity, high school students, unlike college students are required by compulsory attendance laws to attend classes, and may have no choice as to curriculum or teachers. *Mailloux v. Kiley, supra,* and *Katz v. McAulay,* 438 F.2d 1058 (2nd Cir. 1971). The three judge court in *Banks v. Board of Public Instruction of Dade County,* 314 F.Supp. 285 (S.D. Fla., 1970, 3 Judge Court) vacated on other grounds. 401 U.S. 988, 91 S.Ct. 1223, (1971), recognized the

effect of compulsory education and class scheduling on the high school environment as compared to that of a college:

> There are significant factual distinctions between *Dixon* [Dixon v. Alabama State Board of Education, 294 F.2d 150 (5th Cir.) cert. denied 368 U.S. 930, 82 S.Ct. 368 (1961)] and this case—between a college suspension and a public school suspension. For example in a college or university, teachers and students are rarely in class for more than a few hours a day, whereas in the public school system teachers and students are in class throughout the day. 314 F.Supp. 285, 292.

A final differentiating factor is directly related to those factors mentioned above. While the concept of *in loco parentis* has been almost uniformly rejected at the college level, the maturity level of public school students, the existence of compulsory education, the nature of class scheduling and parental expectations place the teachers and administrators of the public schools in some limited degree of *in loco parentis* to the students. *Mailloux v. Kiley, supra, Pervis v. La Marque Independent School District, supra, Axtell v. Lapenna,* 323 F.Supp. 1077 (W.D. Penn. 1971); and *Cordova v. Chonko,* 315 F.Supp. 953 (N.D. Ohio, 1970).

The Supplemental Rules Concerning Student Conduct as applied to Paul Kitchen and the public school students of the District are reasonable within the public school environment. As stated by the Court below this case presents "the now-familiar clash between claims of First Amendment protection on the one hand and the interests of school boards in maintaining an atmosphere in the public schools conducive to learning on the other." 475

F.2d 1071, 1072. The respective rights of all parties have been appropriately balanced, and there is no important constitutional question to be considered by this Court.

Conclusion

For the foregoing reasons it is respectfully submitted that this petition for a writ of certiorari should be denied.

Respectfully submitted,

BRACEWELL & PATTERSON

William Key Wilde
Counsel for Respondent
Houston Independent School
District, et al.

September 26, 1973

Certificate Of Service

Three true and correct copies of the foregoing Brief of the foregoing Brief of Respondent in Opposition to Petition for a Writ of Certiorari have been served on Alan H. Levine, New York Civil Liberties Union, 84 Fifth Avenue, New York, N.Y., 10011, Attorney for Petitioner Paul Kitchen by mailing copies of the same by United States Mail, Airmail, with sufficient postage thereon and to Robert E. Hall, Dixie, Wolfe and Hall, Suite 401, 609 Fannin Street, Houston, Texas 77002, Attorney for Petitioner Paul Kitchen by hand delivering copies of the same to their offices, this _____ day of September, 1973.

William Key Wilde

APPENDIX

SUPPLEMENTAL POLICIES CONCERNING STUDENT CONDUCT

APPROVED BY THE BOARD OF EDUCATION OF HOUSTON INDEPENDENT SCHOOL DISTRICT

February 23, 1970

HOUSTON INDEPENDENT SCHOOL DISTRICT

Supplemental Policies Concerning Student Conduct

The Houston Independent School District has the responsibility of maintaining a high-quality education program for its students. To achieve this objective, the District must create an atmosphere for the attainment, exchange and application of ideas. School officials also have the responsibility of achieving an atmosphere free from disruptions and distractions that will materially interfere with or intrude upon the work of a school or its students. Many of our students have an awareness of and an involvement in issues and problems that exist in our community, our state, our nation and the rest of the world. We believe that as students discover their right they should also recognize their responsibilities. The proper balance of rights and privileges with duties, responsibilities and obligations is essential to the development of a creative school community. It is for the purpose of helping the student achieve the qualities of responsible citizenship that the Houston Independent School District, proudly recognizing the First Amendment rights established by our founding fathers, is establishing the following policies as guidelines for the schools, students, parents and citizens

who are concerned about the quality of education in Houston.

The rules contained herein supplement the rules and policies concerning student behavior set forth in the *Handbook for Principals and Teachers: Secondary Schools* (1968) and *Handbook for Elementary Schools* (1968) and supersedes such earlier rules and policies where inconsistent. The rules contained herein shall be posted on the bulletin boards in each school in the Houston Independent School District and shall be available to all interested persons.

Disruptions and Interferences with Educational Process

Any student who incites, encourages, promotes or participates, while at school or at school sponsored activities, in a riot, sit-in, walk out, blockage of entrances, or trespasses or otherwise substantially or materially interferes with normal educational processes shall, at the discretion of the principal, be suspended from school and such student may be charged with violating applicable municipal, state and federal laws.

Any student who wishes to promote, organize or participate in a demonstration or meeting on school premises, other than those sponsored by the school, must obtain prior approval from the principal. Before approving such request, the principal should determine that the demonstration or meeting will be orderly and peaceful and will not interfere with the rights of others or substantially and materially disrupt the educational process. Any student who is denied such request may appeal the adverse decision to the assistant superintendent.

Any student who interferes with, intimidates, harasses or injures another student while at school or while traveling to and from school or intimidates, harasses or injures an employee of the Houston Independent School District shall, at the discretion of the principal, be suspended from school and such person may be charged with violating applicable municipal, state and federal laws.

Student Publications

Student participation in the publication of school newspapers, yearbooks, literary magazines and similar publications is encouraged by the Houston Independent School District as learning and educational experiences. These publications have qualified faculty advisors and strive to meet high standards of journalism. Opportunities for a broad spectrum of opinions shall be provided.

In addition to school-sponsored publications, students are entitled to express in writing their opinions and may distribute handwritten, duplicated or printed materials on school premises or at school-sponsored activities at other locations in accordance with the following conditions and procedures:

(1) A copy of the publication must be given to the principal, who may take up to one school working day for the purpose of reviewing such publication before its general distribution. If, in the opinion of the principal and the attorneys employed by the Houston Independent School District, the publication contain libelous or obscene language or advocates illegal action or disobedience to published rules on student conduct adopted by the Board of Trustees, the principal shall notify the individual or sponsors

of the publication that it cannot be distributed on the school premises. Distribution shall not be prohibited because the publication contains the expression of any idea, popular or unpopular.

(2) A time and place for distribution must be cooperatively established with the principal, except that in any event the distribution can take place before and after regular school hours on school premises.

(3) The publication cannot be sold on school premises.

(4) The publication must contain the names of the individual contributors, editors and publishers.

Distribution on school premises of material consisting primarily of commercial advertising or literature advocating the nomination or election of any person for public office is expressly prohibited.

Distribution of printed material off school premises will be subject to the foregoing rules when the manner of distribution is calculated to and in fact does result in possession by students on school premises. This includes distribution at places adjacent to the school premises in the morning before normal classroom activity has begun.

Student Dress and Personal Grooming

The Houston Independent School District recognizes the importance of encouraging high standards in dress and personal grooming. In those areas where dress and personal grooming relate (i) to specific class instruction or school curriculum such as shop and fashion design, (ii) to cleanliness or health or (iii) to any type of dress or wearing apparel which indecently exposes the person

or substantially disrupts the educational process, the school has a legitimate interest which may be preserved by the use of corrective or disciplinary measures.

Within this framework, each individual school shall adopt specific standards concerning dress and personal grooming. Each principal is directed to establish a committee each year for the purpose of formulating and reviewing dress and personal grooming standards for the school. The committee at each junior and senior high school should be composed of approximately 50% students, 20% parents and 30% teachers and school administrators. Each student governing body should devise a method for selecting students to the committee which will result in all points of view being represented. At each elementary school, the principal should appoint a representative group of parents and teachers to advise him in formulating the standards. Copies of the standards that are adopted by each committee shall be forwarded to the Superintendent for Instruction and Administration who shall submit them to the attorneys for their review and then copies will be distributed to all parents and students.

Possession and Use of Narcotics and Dangerous Drugs

Any student found selling or possessing a narcotic or dangerous drug (as defined by the Penal Code of the State of Texas, including but not limited to marijuana, L.S.D., barbiturates and heroin), not prescribed by a licensed physician, while on school premises or while participating in a school-sponsored activity shall be suspended. After such suspension, each case must be reviewed by the appropriate assistant superintendent before the student can be readmitted to school.

Any case involving the possession and misuse of narcotics and dangerous drugs should be reported immediately to the appropriate assistant superintendent and the Director of School Health Services by phone and in writing. The parent or guardian should also be notified immediately and requested to come to the school. After proper notification, if the parent or guardian cannot or will not come to the school, a letter should be sent to him describing the circumstances. The Juvenile Division of the Houston Police Department should also be notified immediately.

Article 2338-1, Revised Civil Statutes of Texas, establishes procedures whereby juveniles* can be dealt with under civil rules in cases of use or possession of drugs. Legal regulations concerning possession, as given by the District Attorney's office, include the following:

(1) Any juvenile found guilty of possession of a narcotic drug may be sent to a juvenile correctional institution until he is 21 years of age or may be placed under the supervision of a probation officer. (Penal Code, Art. 725b)

(2) Any juvenile found guilty of possession of a dangerous drug—any drug unsafe for self-medication —may be punished as in narcotic offenses. (Penal Code, Art. 726d)

(3) For possession of a hallucinogenic substance, the juvenile offender will be treated as in narcotic and dangerous drug offenses.

(4) Any person, juvenile or adult, found in violation of the drug laws of Texas will be arrested and

* Legal definition of a juvenile: boy, ages 10-16; girl, ages 10-17.

prosecuted, thus giving him a permanent record of arrest.**

Any student moving into the Houston Independent School District, who, for any of the above reasons, is under suspension from another school system shall not be admitted until his suspension term has been ended, or he has been exonerated by the suspending district.

A report of any disciplinary action concerning the above violations shall be sent immediately to the receiving principal of the school to which a student under such action may transfer.

Suspension Procedures

If in the opinion of the principal any student violates published rules and regulations on student conduct adopted by the Board of Trustees, such student may be suspended for a reasonable period of time not exceeding three school days. In all cases where a student is suspended, the student and the parent or guardian shall be notified in writing of the reasons therefor. If a student is sent home during the day, the parent or guardian must be notified in advance.

If the suspension period is for an indefinite period of time or a period in excess of three school days, the following procedures shall apply:

(1) The student and his parent or guardian must be notified in writing of the reasons for suspending the student and a prompt hearing at the school must be arranged if requested by the student or parent or guardian. The student and his parent or guardian

** Quoted from *Drug Scene*, by Carol S. Vance, Harris County District Attorney.

shall be furnished with a copy of the suspension procedures and advised that they may have witnesses and present evidence at the hearing to refute the allegations of misconduct.

(2) A student or his parent or guardian who desires to be assisted at the hearing or any disciplinary proceeding may be accompanied by an adult person who may represent and assist him in the proceedings. If a parent or guardian is unable to attend, he may designate an adult to represent the student. The Houston Independent School District may require evidence of the appointment of any such representative.

(3) If substantial evidence is presented at the hearing which, in the judgment of the principal, warrants suspension for a substantial period of time, he shall inform the student and parent or guardian of the decision not to reinstate the student and apprise the student and parent or guardian of the right to appeal the decision to the appropriate assistant superintendent. The decision of the principal shall be based exclusively on evidence presented at the hearing.

(4) Any student or his parent or guardian who wishes to appeal shall notify the principal in writing of his intention to appeal. The principal shall immediately notify his assistant superintendent who will arrange a time for hearing the appeal. Such notification to the assistant superintendent shall include or be immediately followed by a letter from the principal containing a complete description of the student's conduct, including all offenses and dates, any pertinent supplemental information and a rec-

ommendation for disposing of the case. The assistant superintendent shall notify the student and the parent or guardian of the time and place of the hearing. The hearing shall be held within seven days from the date the student or parent or guardian notifies the principal of his intention to appeal, unless the parent or guardian agrees to an extension.

(5) At the hearing on appeal, the assistant superintendent shall confer with the principal and the student and his parents or guardian and determine whether the student shall be suspended for more than three school days or be reinstated.

(6) If suspension in excess of three school days is sustained on the basis of substantial evidence presented at the hearing, the assistant superintendent will forward the pertinent information to the deputy superintendent for elementary or secondary schools and the Superintendent for Instruction and Administration, who will review the facts and confirm or reverse the decision.

(7) The student or his parent or guardian may appeal the decision by school administrative officials to the Board of Trustees.

Notices to Parents or Guardian

When necessary to assure effective communication, any notice required herein to be sent to the parents or guardian of a student shall be written in the language spoken by the parents or guardian. If the language spoken by the parents is other than Spanish, such notice shall be written in such other language if facilities are available.